

**State of Illinois**

**Illinois Commerce Commission**

Illinois Commerce Commission	)	
On its own motion	)	
	)	
Proceeding to monitor the ongoing	)	Docket No. 03-0056
Development of the marketplace for	)	
Commonwealth Edison Customers	)	

**Staff of the Illinois Commerce Commission's reply to  
Initial Comments of Commonwealth Edison**

The staff of the Illinois Commerce Commission ("Staff" and "Commission") replies to the Initial Comments of Commonwealth Edison ("Initial Comments").

In the Initial Comments

ComEd requests (1) that the Commission specify that, absent further action by the Commission, the reporting requirements established in this docket terminate with the end of the mandatory transition period, and (2) that in order [to] limit the potential restrictions of the ex parte rules on Commissioners' ability to solicit and receive information on the developments in the electric market, the Commission (a) close this proceeding or, in the alternative, (b) clarify that it is only the reporting requirements themselves that the subject of this docket and not the interpretation of the data collected or the status of the market.

(Initial Comments, page 1.)

*I. Termination of reporting requirements at end of transition period*

Commonwealth Edison Company ("ComEd") argues that the end of the Public Utilities Act's mandatory transition period for retail electric services may introduce market changes that increase the appeal of competitive choice for these services. It notes that "the freeze on ComEd's bundled rates might be moved to a level that make competitive choice and additional competitive entry more attractive" and that "customer transition charges, applicable to customers who leave ComEd's bundled service will be eliminated." (Initial Comments, page 2.)

Staff agrees that the end of the transition period may make competitive options in ComEd's service territory more attractive. However Staff disagrees that these newly competitive conditions warrant the automatic end of Commission market-monitoring efforts. The Commission, in its Order Initiating Proceeding, clearly indicates that it "intends to track the nature of the competitive market on a forward-going basis" and that the present proceeding "will serve as a forum and mechanism for the Commission's consideration and monitoring of competitive developments." (Order Initiating Proceeding, page 1, citing Interim Order in docket 02-0479 (ComEd "Rate 6L Petition"), page 78.)

While the transition period's end may create a playing field more favorable to retail competition, it also removes "safety nets" the Public Utilities Act and Commission orders now provide. ComEd's present power-purchase option ("PPO") will be eliminated, by way of example, along with its offering of a monthly energy-price product ("MEP").

The wholesale market will similarly change. ComEd is scheduled to become an integrated part of Pennsylvania Jersey Maryland regional transmission organization ("PJM"). While this change may provide positive developments for competition, the introduction of PJM may also bring problems to the extent that it creates rifts in the Midwest's wholesale market. Midwest independent system operator and PJM "through and out" rates may artificially stifle wholesale trade across this rift, limiting wholesale-market development and providing opportunities for the type of market manipulations seen in California's recent energy crisis. The continuing issues of the weak financial condition of many potential suppliers and the Public Utilities Act's "reciprocity" conditions also still plague development of the retail market.

While the end of the mandatory transition period provides changes that may prove positive in developing competition, there remain sufficient reasons for the Commission to continue its market observations beyond this time. Staff recommends a continuation of the reporting requirements, noting that by the end of the mandatory transition period some will be rendered irrelevant. Yet Staff does not view these exceptions as invitations to end reporting altogether. Rather it suggests that the Commission let time eliminate certain reporting requirements as the transition period's termination renders them irrelevant, while maintaining ComEd's obligation to provide information relevant to, and indicative of, continued retail activity in the ComEd marketplace. By the end of the transition period, ComEd's reporting requirements for PPO, MEP, and data items 2, 3, 4, and 5 of the Commission's Interim Order in this proceeding (differentiated from its Interim Order in docket 02-0479) will end of their own accord; ComEd should nonetheless continue to report information regarding customers on retail electric supplier ("RES") service, interim-supply service ("ISS"), hourly energy-price ("HEP") service, and the like. Staff remains open to eliminating Interim Order data items 6 and 7 shortly after the end of the transition period.

The end of the mandatory transition period does not end the retail market's evolution in ComEd's service territory, nor does it eliminate concerns about market direction or the state of competition generally. Accordingly the Commission should continue to receive market information past the end of the transition period until it determines that a viable competitive environment renders formal monitoring unnecessary.

## *II. Ex parte concerns*

ComEd suggests that, if the Commission keeps the present docket open with the broad scope the Order Initiating Proceeding anticipates, the "ability of Commissioners to individually solicit and receive information on developments in the electric market" is severely limited. (Initial Comments, page 2.) ComEd "does not believe this was the intent of the Commission in initiating this proceeding" and suggests that parties either agree to waive *ex parte* limitations or the Commission "clarify that this docket deals only with the establishment of the reporting requirements themselves and not with any implications or interpretations that might be drawn from the reported data or anything dealing with the status of the electric market in Illinois." (Initial Comments, page 3.)

Staff recognizes that *ex parte* restrictions, coupled with the ongoing nature of market monitoring, may limit informal communications between ComEd, commissioners, and certain parties regarding issues specific to the "3 megawatt" customer market. Staff presumes the Commission is cognizant of this issue and accepts any *ex parte* limitations the Order Initiating Proceeding creates, particularly given the Commission's clarity regarding this proceeding's generous scope:

By initiating this proceeding, the Commission intends to track the nature of the competitive market on a forward-going basis. *This proceeding will serve as a forum and mechanism for the Commission's consideration and monitoring of competitive developments.* The findings within the market monitoring proceeding may lead the Commission to determine that Rate 6L for customers 3MW and greater is either competitive or not competitive. Moreover, by initiating this proceeding now rather than later, the Commission is able to promptly address any deterioration in competitive conditions.

(Order Initiating Proceeding, page 1, citing Interim Order in docket 02-0479, page 78; emphasis added.) The Order Initiating Proceeding is clear that this market-monitoring proceeding is *the* venue in which the 3-megawatt market will be considered. Market-monitoring, broadly defined, is unquestionably within the present scope.

The Order Initiating Proceeding also states the means by which the Commissioners receive market information, recommending that they “be provided with a tentative timeline for Staff to provide periodic monitoring reports during remaining life of this proceeding.” (Order Initiating Proceeding, page 5.) In its subsequent Interim Order, the Commission accepts Staff’s recommendation “that it provide an initial written market monitoring report to the Commission by December 31, 2003, using information available at that time” and

that, starting in 2004 and going forward, it provide an annual written market monitoring report 45 days after ComEd and the RESs provide data for the fourth quarter of each year. In all instances Staff remains free to report more frequently if the need arises; reports need not be limited to discussions of data provided through this process. A report may, for example, examine the state of the wholesale market.

(Interim Order in this proceeding, pages 6 and 7.) The Commission does not entertain informal updates from the parties regarding market status, nor does it limit the present proceeding to the establishment of reporting requirements. Rather “This proceeding will serve as a forum and mechanism for the Commission’s consideration and monitoring of competitive developments.” (Order Initiating Proceeding, page 1, citing Interim Order in docket 02-0479, page 78.) The Commission anticipates Staff’s provision of market information through formal reports and, presumably, the parties’ formal responses to information provided.

The Commission approach offers considerable advantages. Maintaining discussions within the formal framework of a Commission proceeding ensures that all parties have equal voice in every debate. When arguments, points of contention, and facts enter the public record, all parties have knowledge of all matters and may respond accordingly. When statistics, facts, and arguments are subject to public scrutiny and verification, the Commission and all parties benefit.

Admittedly, as ComEd notes, the Commission’s orders may have the practical effect of limiting the “ability of Commissioners to individually solicit and receive information on developments in the electric market” (Initial Comments, page 2), presumably requiring that Commission discussions of the 3 megawatt market only occur in public forums, with all interested parties represented.

As such, the Commission may well stifle informal debate. Given Staff’s recommendation that market monitoring and data collection continue past the mandatory transition period’s end, restrictions on informal discussions may prove burdensome. Should the Commission find maintenance of an ongoing market-monitoring docket overly restrictive, Staff believes that ComEd’s recommended solutions sufficiently address this concern. Closing this proceeding while

continuing to collect market data, or narrowing its present scope to address reporting requirements alone, allows the Commission to maintain its market oversight while eliminating ComEd's perceived *ex parte* concerns.

### *III. Conclusion*

Staff recommends that the Commission's data-collection and market-monitoring efforts, including its regular reports from Staff, be maintained beyond the end of the mandatory transition period. Staff recognizes that some required data becomes irrelevant when transition charges disappear and recommends that reporting be adjusted accordingly.

Regarding ComEd's perceived *ex parte* concerns, Staff encourages the Commission to weigh the advantages and disadvantages of maintaining an ongoing market-monitoring proceeding for ComEd's 3-megawatt customers. In the event the Commission finds that disadvantages outweigh advantages, Staff believes that either of the ComEd's recommended solutions remedies the perceived *ex parte* concerns.

Respectfully submitted,

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